

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff;

v.

COMMONWEALTH OF PUERTO RICO, ET
AL.,

Defendants.

No. 12-cv-2039 (GAG)

**STIPULATION AND [PROPOSED] ORDER FOR THE
ESTABLISHMENT OF THE TCA OFFICE AND THE PAYMENT OF TCA EXPENSES**

Plaintiff, United States of America, and Defendants, Commonwealth of Puerto Rico, *et al.* (collectively, the “Parties”), joined by the court-appointed Technical Compliance Advisor (“TCA”), Arnaldo Claudio, enter into this Stipulation for the Establishment of the TCA Office and the Payment of TCA Expenses to ensure that the TCA has the resources and independence required to carry out his duties under the Agreement for the Sustainable Reform of the Puerto Rico Police Department (“Agreement”). Dkt. #60. Specifically, this Stipulation is intended to establish terms and conditions for the creation and administration of the TCA Office, promote transparency in the TCA’s operations and expenses, and ensure the sound administration of public funds.

A. BACKGROUND

1. Paragraph 271 of the Agreement requires that the Parties select an independent TCA to assess and report on the Puerto Rico Police Department’s (“PRPD”) implementation of the Agreement. *Id.* ¶ 271. Section XIV of the Agreement outlines the TCA’s specific duties, responsibilities, and authority, including reviewing policies and training curricula; assessing action plans; conducting surveys and compliance reviews; performing outcome assessments;

preparing semi-annual reports; providing technical assistance; and assisting the Parties with informal dispute resolution. Id. ¶¶ 225-279, 295-296, 300. On June 4, 2014, the Parties notified the Court that they had selected Arnaldo Claudio as TCA. Dkt. #122.

2. On June 5, 2014, following an in-camera meeting, the Court approved the Parties' selection and appointed Mr. Claudio as TCA. Dkt. #124. In its appointment order, the Court instructed that "the terms and conditions of engagement of the TCA shall be determined by the Puerto Rico Department of Justice, in representation of the Puerto Rico Police Department, and the United States Department of Justice." Id. at 1-2. The Court also charged the Puerto Rico Department of Justice with overseeing the administrative arrangements for the Commonwealth to allow the TCA to begin working on June 6, 2014. Id. at 2.

3. The Court further instructed that neither the TCA, nor his staff, will be under contract with the Parties and that the TCA will serve as an officer of the United States District Court for the District of Puerto Rico for the purposes of implementing the Agreement. Id. The TCA's compensation is to be paid by the Court from funds deposited with the Clerk of the Court by the Commonwealth. Id.

4. The Puerto Rico Department of Justice, in consultation with the TCA and the United States Department of Justice, has made arrangements to provide the TCA with office space, materials, and other resources to commence operations on June 6, 2014, including advancing supplies and funding to cover certain administrative expenses, as outlined below.

5. The TCA has formed a corporation, TCAPR Corp., under the laws of the Commonwealth to manage and administer the operations and business of the TCA.

6. This Stipulation is intended to effectuate the Agreement and shall not conflict with any paragraph or provision of the Agreement. The Agreement is incorporated by reference.

B. TCA OFFICE

7. The TCA establishes the TCA Office to include the TCA and all employees, agents, or independent contractors, and which shall be operated and administered through TCAPR Corp., for purposes of implementing the Agreement.

8. The TCA Office shall include at least one administrative officer to assist the TCA with the operation and management of the TCA Office. All persons or entities hired, employed, contracted, or otherwise retained by the TCA shall abide by the Agreement and all ethical requirements established herein or by court order.

9. In addition to the duties, responsibilities, and authority set forth in the Agreement, as officers of the Court, the TCA and all employees, agents, or independent contractors shall comply with the Code of Conduct for Judicial Employees, as adopted by the Judicial Conference of the United States.

10. In accordance with Section XIV(K) and Paragraphs 269-270 of the Agreement, the TCA, including any employees, agents, or contractors of the TCA Office, shall not make public statements outside of unsealed documents filed with the Court, or disclose non-public information provided to the TCA or the TCA Office, pursuant to the Agreement. Any records maintained by the TCA or the TCA Office shall not be deemed public records subject to public inspection.

11. Consistent with Canon 3(D) of the Code of Conduct for Judicial Employees, the TCA, including any employees, agents, or contractors of the TCA Office, shall not disclose any confidential information received in the course of their duties, except as required in the performance of such duties, nor should the TCA or the TCA Office employ such information for personal gain. Former employees, agents, or contractors of the TCA Office should observe the

same restrictions on disclosure of confidential information that apply to any current TCA Office employee, agent, or contractor.

12. Consistent with Canon 5 of the Code of Conduct for Judicial Employees, the TCA, including any employees, agents, or contractors of the TCA Office, shall refrain from partisan political activity, including, but not limited to, publicly endorsing or opposing a partisan political organization or candidate; soliciting funds for or contribute to a partisan political organization, candidate, or event; and should not otherwise actively engage in partisan political activities.

13. Paragraph 274 of the Agreement provides that PRPD shall provide the TCA with permanent office space and reasonable office support, such as office furniture, telephones, access to fax and the Internet, secure document storage, and photocopying. The Puerto Rico Department of Justice, as representative of PRPD, has arranged for the provision of office space at: World Plaza, 268 Muñoz Rivera Avenue, Floor 10, Suite 1001, Hato Rey, Puerto Rico, to be secured through a lease agreement between the TCAPR Corp. and the Puerto Rico Finance and Infrastructure Authority. The monthly rent shall be \$3,000.00 (THREE THOUSAND DOLLARS).

14. To facilitate the start-up of the TCA Office, the Parties agree that the TCA may submit an invoice to the Parties for payment from funds deposited with the Court by the Commonwealth to cover an initial allocation of resources to the TCA Office for purposes of establishing the TCA Office and for covering necessary administrative and operational expenses as of the TCA's appointment date, June 6, 2014:

- a) Office rent deposit and one month in advance: \$6,000.00;
- b) Gasoline and tolls: \$500.00; and

c) Telephone switchboard, lines and installation costs: \$1,675.00.

All other fees, costs, and expenses by the TCA shall be submitted for payment and reimbursement, as set forth below in Section D, below.

C. BUDGET

15. The first year of the operating budget for the TCA Office will run from June 6, 2014, until June 30, 2015. All subsequent annual operating budget periods for the TCA Office shall run concurrently with Puerto Rico's fiscal year, beginning on July 1 and ending on June 30 of each subsequent year.

16. The TCA will submit a proposed annual budget to the Parties at least sixty days (60) days prior to the conclusion of each budget year for approval. The Parties and the TCA agree to discuss and negotiate the proposed annual budget in good faith to ensure that the TCA has sufficient and necessary resources to carry out his duties under the Agreement. The agreed-upon annual budget shall be filed with the Court through an informative motion before the start of each operating budget period. If the Parties and the TCA are unable to agree on an annual budget, any Party or the TCA may request this Court to resolve the matter. The Court's resolution shall be binding on all Parties.

17. In the event that the TCA continues to render services and incur expenses as required by the Court and the Agreement before a new budget is agreed upon, payment for such services or expenses shall be paid by the Commonwealth through a resolution authorizing the payment, and the amounts paid will be deducted from the next Court-approved budget.

18. The Parties and the TCA agree that for the first year and first month of the Agreement, that is, from the appointment date of June 6, 2014, until June 30, 2015, the TCA Office's operating budget shall not exceed \$1,600,000.00 (ONE MILLION SIX HUNDRED

THOUSAND DOLLARS), the equivalent of \$1,500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND DOLLARS) and an additional \$100,000.00 (ONE HUNDRED THOUSAND DOLLARS) in order to accommodate the expenses to be accrued during the twenty-four (24) days of the month of June 2014. After this first year, the budget will continue to run for the following three fiscal years, commencing on July 1, 2015 and ending on June 30, 2018. During such three-year period, the TCA Office's annual operating budget shall not exceed \$1,500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND DOLLARS). The Parties and the TCA shall agree on an annual operating budget for the TCA Office for each budget year after June 30, 2018, or, if the Parties and the TCA are unable to agree, this Court shall resolve the matter to ensure the TCA Office has the resources and support it needs in accordance with the Agreement. The Court's resolution shall be binding on all Parties.

D. PAYMENT OF TCA EXPENSES

19. The TCA's expenses shall be paid by the Court from funds deposited with the Clerk of the Court by the Commonwealth. The Commonwealth agrees to deposit and consign funds into an interest-bearing account with the Clerk of the Court to cover the TCA's approved annual operating budget before the beginning of each annual operating budget period. The Commonwealth agrees to make its first deposit of \$1,500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND DOLLARS) to cover the TCA Office's annual operating budget from June 6, 2014, through June 30, 2015, by June 30, 2014. After July 1, 2014, the PRPD will deposit the amount of \$100,000.00 (ONE HUNDRED THOUSAND DOLLARS) in order to accommodate the expenses to be accrued during the twenty-four (24) days of the month of June 2014. The Commonwealth shall make the deposit from funds available from PRPD Account Number 233-0400000-7802014 for the Reform of the Puerto Rico Police Department.

20. Any accrual of interest of the deposited and consigned amount with the Clerk of the Court shall be the property of the Commonwealth.

21. Should extraordinary circumstances require an increase in the TCA Office's approved annual operating budget, the TCA must obtain prior written approval from both the Parties before any expense is incurred beyond the approved annual operating budget, and any such written approval will be filed for the Court's endorsement. In the event that no agreement is reached on an increase to the TCA Office's annual operating budget, any party or the TCA may request this Court to resolve the matter. The Court's resolution shall be binding on all Parties.

22. By the 10th day of every month, the TCA Office shall submit an invoice to the Court covering the preceding month's expenses, including professional fees, reimbursable travel expenses, and supply and service costs. The TCA Office may submit a request for payment of fixed administrative costs for the next succeeding month on a monthly basis with prior written approval of the Parties to cover expenses such as: monthly rent payments, utility costs, and employee salaries.

23. Invoices or requests for payment submitted by the TCA Office shall contain: a detailed statement of services rendered during the reporting month; a certification of the total time spent by each employee, agent, or contractor on Agreement-related activities; and receipts or other evidence of expenses incurred. The TCA shall also certify that neither he nor any member of the TCA Office has received any income, compensation, or payment for services rendered under a regular employment or contractual relationship with the Commonwealth, or any of its departments, municipalities or agencies.

24. The TCA agrees that any payments under the Stipulation do not absolve the TCA of any obligations he or the members of the TCA Office may have under state and federal tax laws, federal social security inquiries, municipal patents, unemployment insurance and any other obligations to the Commonwealth, state or federal, as they may arise as a result of doing business in the Commonwealth.

25. The Parties shall review each invoice and request for payment submitted by the TCA Office. Each party shall have the right to object to any expense that it considers unreasonable, excessive, or beyond the scope of the duties of the TCA, as set forth in the Agreement, by notifying the TCA Office in writing of the objection and the reasons therefore within seven (7) days after the TCA Office files the invoice or request for payment with the Court. If neither party raises an objection with the TCA Office within seven (7) days after the TCA Office files the invoice or request for payment with the Court, the Court shall pay the invoice or request. If a party raises an objection, the TCA Office shall have seven (7) days to respond to the objection and either withdraw, modify, or renew the expense. Only the specific expense that is the subject of an objection shall be withheld pending resolution. The Parties will work in good faith to resolve any such objections and responses in a timely manner. In the event that no such resolution is reached, the Parties will submit the dispute to this Court for resolution, which shall be binding on all Parties.

26. The Parties recognize that prompt payment of reasonable expenses and costs incurred by the TCA Office facilitates the continuity of operations and sound administration of the TCA Office. The Parties agree to work cooperatively to resolve budget and expense disputes as expeditiously as possible and before seeking the Court's assistance.

E. GUIDELINES FOR TCA COSTS AND EXPENSES

27. The Parties agree that the TCA and the TCA Office will incur specific costs and expenses as part of discharging their duties, responsibilities, and authority under the Agreement.

These costs and expenses include, but are not limited to:

- a) professional service fees for the TCA and subject-matter experts;
- b) travel costs and related expenses, including reimbursement of mileage and per diem;
- c) reasonable office expenses and support;
- d) technical support;
- e) wages and compensation of assistants and the clerical staff;
- f) the costs associated with contracting consultants in those areas outside the areas of expertise of the TCA; and
- g) any related and necessary expense incurred as a result of the TCA Office's oversight activities.

28. The Parties agree to the following guidelines on anticipated expenses to facilitate the review of invoices and requests for payment submitted by the TCA Office and to assist the TCA in the preparation of annual operating budgets for the TCA Office. The amounts specified below may be modified by written agreement of the Parties and the TCA, with the Court's approval.

- a) TCA Compensation: The total compensation for the TCA shall not exceed \$215,000.00 (TWO HUNDRED FIFTEEN THOUSAND DOLLARS) during any annual operating budget period.

- b) Meals and Incidental Expenses While on Travel Status: Each member of the TCA Office shall be reimbursed up to fifty dollars (\$50.00) for meals per day while on travel status associated with activities and operations of the functions contemplated by the Agreement. When travel status begins at 3:00 pm or later from the origin of travel or if travel status ends at 3:00 pm or earlier from the work site, the reimbursement for meals for any such day (arrival and departure) will be twenty five dollars (\$25.00).
- c) Airfare: Travel expenses will be limited to coach-class fares and any incidental expenses, such as baggage fees. Every effort should be made to acquire the lowest possible fares. Only penalties for changes in reservations associated with circumstances related to this case will be reimbursable. (A brief statement of circumstances surrounding the need for the expense should accompany the invoice.) Changes will be made with the TCA approval only.
- d) Vehicle Expenses: The Puerto Rico Department of Justice shall provide the TCA Office with two (2) used sports utility vehicles. The vehicles are to be used as the means for transportation during official travel by members of the TCA Office while in Puerto Rico, to the extent possible. Car rental expenses will not be approved once the two (2) vehicles are provided to the TCA by the Puerto Rico Department of Justice. Any maintenance or gasoline for the two (2) vehicles will be a reimbursable expense within the limits of the TCA's approved annual operating budget. The vehicles will include the Department of Transportation permit (*marbete*), confidential government plates, and auto insurance.
- e) Office Supplies: On June 13, 2014, the PRPD delivered to the TCA's Office certain

property consisting of office furniture and supplies for use by the TCA Office in compliance with Paragraph 274 of the Agreement. The furniture will be returned to the PRPD at the expiration of the Agreement or in the event the furniture is no longer usable. The office supplies will be supplied on a one-time basis by the PRPD for start-up of the TCA's Office. Any additional office supplies will be purchased by the TCA Office and will be reimbursed as per the terms of this Stipulation. The property list is included in Exhibit 1 to this Stipulation.

- f) Parking and Tolls: The TCA Office is entitled to reimbursement of the following expenses when such expenses are incurred in the activities and operations of the functions contemplated by the Agreement: work-related parking, tolls, including those incurred outside of Puerto Rico for travel associated with official services. Valet parking expenses will not be approved for reimbursement. Parking receipts are to be submitted with the respective months' invoice.
- g) Lodging While on Travel Status: The TCA Office will provide its employees, agents, or contractors with lodging while on travel status. To this end, the TCA Office will lease a secure, completely furnished house or apartment for the comfort, health and care of employees, agents, or contractors while on travel status in Puerto Rico. The house or apartment will provide independent facilities for males and females, Wi-Fi, TV, parking for vehicles and regular commodities. The house or apartment's control, maintenance and responsibilities will be part of the TCA Office's duties and responsibilities. Rent payments and other incidental expenses for the house or apartment, such as utilities, repairs, and maintenance, shall be made from the TCA's annual operating budget. Any other ancillary or

personal expense in the house or apartment not mentioned before such as laundry cost, house video, bar, gratuities, personal items and personal telephone calls, etc. are not reimbursable.

h) Gratuities: Gratuities of any kind are not reimbursable.

29. Paragraph 273 provides that in the event that any dispute arises regarding the reasonableness or payment of the TCA's fees and costs, the Commonwealth, the United States Department of Justice, and the TCA shall attempt to resolve the dispute cooperatively prior to seeking the assistance of the Court. To this end, the Parties shall have the right to inspect and audit, pursuant to accepted auditing standards, all records and activities that the TCA may perform as a result of this Stipulation in order to determine compliance with this Stipulation, the Agreement, or applicable federal or Commonwealth laws. The audit will be performed by a Certified Public Accountant selected by the party seeking the audit.

30. The TCA Office may contract with an accountant to assist in financial administration and managerial and accounting reports for each annual operating budget period. Following each natural year, which starts on January 1st and ends on December 31st, the TCA shall file with the Court an annual financial statement.

31. No person or entity is intended to be a third-party beneficiary of the provisions of this Stipulation for the purposes of any civil or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Stipulation.

Agreed to and respectfully submitted,

FOR PLAINTIFF UNITED STATES:

JOCELYN SAMUELS
Acting Assistant Attorney General

FOR DEFENDANT COMMONWEALTH OF
PUERTO RICO:

CESAR MIRANDA
Secretary of Justice

JONATHAN M. SMITH
Chief

S/ LUIS E. SAUCEDO
LUIS E. SAUCEDO (G01613)
Acting Deputy Chief
ZAZY LOPEZ
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bannexy@justicia.pr.gov

Attorney for Defendants

FOR THE TECHNICAL COMPLIANCE ADVISOR:

S/ ARNALDO CLAUDIO
ARNALDO CLAUDIO
Technical Compliance Advisor

SO ORDERED, this 26 day of June, 2014,

s/ Gustavo A. Gelpí
GUSTAVO A. GELPÍ
United States District Judge

EXHIBIT 1



ESTADO LIBRE ASOCIADO DE PUERTO RICO

POLICIA

13 de junio de 2014

MATERIALES ENTREGADOS A LA OFICINA DEL ASESOR DE CUMPLIMIENTO TÉCNICO

RECIBO DE PROPIEDAD

DESCRIPCIÓN	NÚMERO DE PROPIEDAD
silla fija color verde	P-N/C 21696
silla fija color verde	P-N/C 21697
silla fija color verde	P-N/C 21708
credenza	P-N/C 21730
multifuncional	P-294632

LISTA DE MATERIALES

DESCRIPCIÓN	CANTIDAD
lápices	3 docenas
bolígrafos color azul	1 docena
bolígrafos color negro	1 docena
reglas de 12"	2
engrapadora	2
perforadora	2
removedor de grapas	3
bandejas plásticas (legal)	5
sujetadores de metal	4 cajitas
grapap	2 cajitas
gomap de borrar	4
tijeras	3
cinta adhesiva	1
papel 8 1/2"x 11"	20 resmas
papel 8 1/2"x 14"	20 resmas
sobres 9" x 12"	250
sobres 10"x 15"	250
folders tamaño carta	200
folders tamaño legal	200
liquido para corregir errores	1
libreta de anotaciones	2
marcadores negro	2
liguillas	5 bolsitas
Libretitas con pegatina	3

Edwin F. Reyes

Nombre del Receptor 13-JUN-14

11:30^a

NEGOCIO DE TECNOLOGIA Y COMUNICACIONES
INVENTARIO DE EQUIPO

PISO 5 1 2 3 4 5 6 7 8 9 10 11

Area : San Juan Teléfono : _____
Unidad de Trabajo : Oficina del Asesor Cumplimiento Técnico Extensión : _____
Nombre de Usuario : Amaldo Claudio Empleado # : _____

EQUIPO NUM. PROPIEDAD NUM SERIE SISTEMA OPERATIVO MODELO MARCA

SERVER					
LAPTOP					
DESKTOP	<u>P-290391</u>	<u>89XFRZ1</u>		<u>D7iplex7010</u>	<u>DELL</u>
MONITOR					
TECLADO					
MOUSE					
PRINTER					
UPS					
PROYECTOR					
FAX					
CAMARAS					
SCANNER					
FOTOCOPIADORA					

COMPONENTES

EQUIPO OCUPADO Y/O REASIGNADO

HARD DISK
MEMORIA (RAM)

COMP.
OTRO.

COMENTARIOS

Edif. World Plaza, piso 10, Ave Muñoz Rivera

NUEVO USUARIO

: NOMBRE

RECIBIDO POR

P/c Sgto. [Signature] 8-34821 FECHA

17-jun-14

ENTREGADO POR

[Signature] 30332 FECHA

17 Junio - 2014

**NEGOCIAL DE TECNOLOGIA Y COMUNICACIONES
INVENTARIO DE EQUIPO**

PISO S 1 2 3 4 5 6 7 8 9 10 11

Area :

Unidad de Trabajo :

Nombre de Usuario :

San Juan
Ofic. Asesor de Cumplimiento Técnico
Arnaldo Claudio

Teléfono :

Extensión :

Empleado # :

EQUIPO	NUM. PROPIEDAD	NUM SERIE	SISTEMA OPERATIVO	MODELO	MARCA
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SERVER
LAPTOP
DESKTOP
MONITOR
TECLADO
MOUSE
PRINTER
UPS
PROYECTOR
FAX
CAMARAS
SCANNER
FOTOCOPIADORA

	P-290294	86RF8Z1		Dellplex 7010	DELL

COMPONENTES

EQUIPO OCUPADO Y/O REASIGNADO

HARD DISK
MEMORIA (RAM)

COMP.
OTRO.

COMENTARIOS

Edificio World Plaza, piso 10, Ave. Muñoz Rivera

NUEVO USUARIO

: NOMBRE

RECIBIDO POR

: Plc. Sofía Vázquez 8-348214 FECHA 17-jun-14

ENTREGADO POR

: Refe Iván Ote Hootyune 3053 FECHA 17 Junio - 2014

**NEGOCIALIO DE TECNOLOGIA Y COMUNICACIONES
INVENTARIO DE EQUIPO**

PISO S 1 2 3 4 5 6 7 8 9 10 11

Area :

Unidad de Trabajo :

Nombre de Usuario :

San Juan
Ofic. Asesor de Cumplimiento Técnico
Arnaldo Claudio

Teléfono :

Extensión :

Empleado # :

EQUIPO	NUM. PROPIEDAD	NUM SERIE	SISTEMA OPERATIVO	MODELO	MARCA
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SERVER
LAPTOP
DESKTOP
MONITOR
TECLADO
MOUSE
PRINTER
UPS
PROYECTOR
FAX
CAMARAS
SCANNER
FOTOCOPIADORA

	P-294402	55PGD12		Latitude E6440	Dell

COMPONENTES

EQUIPO OCUPADO Y/O REASIGNADO

HARD DISK
MEMORIA (RAM)

COMP.
OTRO.

COMENTARIOS

Edif. World Plaza, piso 10, Ave. Muñoz Rivera

NUEVO USUARIO

: NOMBRE

RECIBIDO POR

: P/L Sgto. [Signature]

FECHA

17-jun-14

ENTREGADO POR

: Apto. Lucán Ortiz 30532

FECHA

17 Junio 2014

**NEGOCIALO DE TECNOLOGIA Y COMUNICACIONES
INVENTARIO DE EQUIPO**

PISO S 1 2 3 4 5 6 7 8 9 10 11

Area :

Unidad de Trabajo :

Nombre de Usuario :

San Juan
Ofic. Asesor de Cumplimiento Técnico
Arnaldo Claudio

Teléfono :

Extensión :

Empleado # :

EQUIPO	NUM. PROPIEDAD	NUM SERIE	SISTEMA OPERATIVO	MODELO	MARCA
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SERVER
LAPTOP
DESKTOP
MONITOR
TECLADO
MOUSE
PRINTER
UPS
PROYECTOR
FAX
CAMARAS
SCANNER
FOTOCOPIADORA

P-24401	FGWFD12			Latitude E6440	DELL

COMPONENTES

EQUIPO OCUPADO Y/O REASIGNADO

HARD DISK
MEMORIA (RAM)

COMP.
OTRO.

COMENTARIOS

Edif. World Plaza, piso 10, Ave Muñoz Rivera

NUEVO USUARIO

: NOMBRE

RECIBIDO POR

: P/c Jh. Ortiz 8-34624

FECHA

17-jun-14

ENTREGADO POR

: Ref. Juan Ortiz 30532

FECHA

17 Junio - 2014